

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSELITO MONTALVO,

Defendant-Appellant.

UNPUBLISHED

March 31, 2000

No. 212970

Wayne Circuit Court

Criminal Division

LC No. 97-004641

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his conviction of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of first-degree home invasion on an aiding and abetting theory. The evidence showed that forced entry was made into complainants' home while complainants were present. Before the break-in at complainants' home, defendant and another person were seen removing boxes from an abandoned home next door. Defendant knocked on complainants' door and rang the doorbell several times. Before and after he did so, defendant was seen speaking with the person later identified as the perpetrator of the break-in. The perpetrator was the same person with whom defendant had been seen earlier at the abandoned house. After one of the complainants startled the perpetrator, he and defendant fled together. Defendant admitted being in the abandoned house, but denied assisting in the break-in of complainants' home. The trial court found defendant guilty of first-degree home invasion. The court concluded that defendant's testimony was not credible.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221,

268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), lv gtd 461 Mich 880 (1999).

A person who breaks and enters a dwelling with the intent to commit a felony or a larceny therein, or a person who enters a dwelling without permission with the intent to commit a felony or a larceny therein, is guilty of first-degree home invasion if at any time while the person is entering into, present in, or exiting the dwelling he is armed with a dangerous weapon, or another person is lawfully present in the dwelling. MCL 750.110a(2); MSA 28.305(a)(2); *People v Warren*, 228 Mich App 336, 347-348; 578 NW2d 692 (1998), lv gtd 460 Mich 851 (1999). To establish aiding and abetting, the prosecution must show: (1) that the crime was committed by the defendant or by some other person; (2) that the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) that the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999).

Defendant argues that the evidence was insufficient to support his conviction of first-degree home invasion, either as a principal or as an aider and abettor. We disagree. It was undisputed that the crime of first-degree home invasion was committed by a person other than defendant. Defendant denied assisting in the commission of the crime; however, the trial court, as trier of fact, was entitled to conclude that defendant's testimony was not credible. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). The evidence showed that defendant spoke with the perpetrator of the break-in immediately before and after he knocked on the door of complainants' home. From this evidence, the trier of fact could infer that defendant was doing an act, i.e., trying to determine if complainants were at home, to assist the commission of the crime of home invasion he knew that the perpetrator intended to commit. *Carines, supra*; *Vaughn, supra*. The state of mind of an aider and abettor may be inferred from all the facts and circumstances. *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995). Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction. *Petrella, supra*.

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey